

IN THE HIGH COURT OF DELHI

Cont.Cas.(C) No.595/2007

Jeewan Mehra Petitioner
! through: Ms.Karuna Nundy, Advocate

VERSUS

\$ Air India Respondent
^ through: Mr.Brijesh Anand with
Mr.Arvind Kumar, Advocates

% DATE OF DECISION: 17.12.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

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1. On 6.2.2007, WP(C) No.11857/2006 filed by the petitioner was disposed of with the following order :-

“06.02.2007

Rule.

With the consent of learned counsel for both the parties, the petition is taken up for final disposal.

Learned counsel for the petitioner states that he is confining the relief in the present petition to the prayer that the respondent be directed to complete the inquiry proceedings pending against the petitioner in a time bound manner. It is stated by the learned counsel

for the petitioner that 3 charge sheets were issued by the respondent to the petitioner, dated 28.8.1996, 18.12.1997 and 10.9.2003. Learned counsel for the respondent states that the Inquiry Committee is making efforts to complete the inquiry proceedings with respect to all the three charge sheets expeditiously.

Directions are issued to the respondent to ensure that the inquiry proceedings in respect of all the three charge sheets are completed expeditiously, preferably within four months, under intimation to the petitioner. The petitioner also gives an assurance that he will extend full cooperation in completion of the inquiry and there shall be no attempt on the part of the petitioner to delay the proceedings. The writ petition and the applications are disposed of accordingly.

Copy of this order be given dasti to learned counsels for the parties."

2. From the order dated 6.2.2007 it is apparent that challenge was made to the 3 charge sheets dated 28.8.1996, 18.12.1992 and 10.9.2003 on the ground that the continued disciplinary proceedings were in violation of the right of the petitioner to a speedy trial. I note that the order records the desire of the court to have the inquiry proceedings concluded as early as possible preferably within 4 months.

3. Alleging contempt it is stated that notwithstanding the order dated 6.2.2007 disciplinary proceedings continued much beyond 4 months. Prayer made is to initiate proceedings for contempt against the respondent as also to quash the charge sheets and release the retiral benefits of the petitioner.

4. At the outset it may be noted that order dated 6.2.2007 is not couched in mandatory language. The language is akin to a pious belief.

5. I may note that the direction issued by the respondent is to complete the enquiry as expeditiously as possible. Hope expressed is that preferably the same would be completed within 4 months.

6. Be that as it may, I have independently considered the matter on merits for the reason, respondent cannot unduly prolong the disciplinary proceedings, especially for the reason, petitioner has retired and has not received, as is claimed by him, the retiral benefits.

7. I had called for the records of the Enquiry Officer to peruse the steps taken after 6.2.2007 to complete the enquiry proceedings with right earnest.

8. I note that when the order in question was passed, the next date had already been notified for further proceedings, to be 5.3.2007. On said date departmental witness Mr.R.Gulgule was examined. Part of the proceedings relate to the enquiry committee dealing with the request of the petitioner that one Mr.R.Nag who had since retired from service be permitted to act his defence assistance and the committee responding that under the regulations only a serving employee

could act as the defence assistance. The next date notified was 6.3.2007, i.e. the very next day.

9. What is relevant for purposes of the instant petition is that on 5.3.2007 the Enquiry committee took earnest steps to continue with the enquiry. Record of the enquiry committee pertaining to the meeting held on 6.3.2007 shows the further desire of the petitioner to have assistance of Mr.R.Nag and his request that cross-examination of the departmental witness Mr.R.Gulgule be deferred till he arranges a defence assistance. The matter was renotified for 22.3.2007. Nothing transpired on said date in view of representation received from the petitioner that he had sought permission from the Chairman-cum-Managing Director that Mr.R.Nag be permitted to act as his defence assistance. Matter was renotified for 9.5.2007 when petitioner was allowed to be represented through Mr.R.Nag as his defence assistance. Mr.R.Gulgule was cross-examined by the defence assistance for about an hour. Matter was listed on 10.5.2007. On said date Mr.R.Gulgule was cross-examined at length for nearly 5 hours. The order dated 10.5.2007 records that the committee desired that further hearing should be held as quickly as possible and proposed 18.5.2007 for said purpose. But, petitioner stated that he was not in town and requested for another date. The matter was listed thereafter

for further consideration on 16.7.2007. Mr.R.Gulgule was cross-examined on said date. Cross-examination continued on 17.7.2007. Order sheet dated 17.7.2007 record that the Enquiry Committee was inclined to hold further proceedings the next date subject to an assurance from the defence counsel that cross-examination would be completed in 2 hours. The defence counsel, i.e. petitioner's assistant informed that the cross-examination was likely to continue much beyond 2 hours. It records by consensus that further proceedings would be held from 21.8.2007 till 23.8.2007. Hearing scheduled for 21.8.2007 could not take place as a member of the Enquiry Committee had to attend official work. The committee reassembled on 22.8.2007. Matter had to be adjourned as Mr.R.Nag, the defence assistant was stated to be out of town. Proceedings were adjourned to 24.9.2007. On said date the defence assistant Mr.R.Nag did not appear and on said account matter had to be adjourned. 12th to 14th November, 2007 were notified as the dates for further hearing. All 3 dates got frustrated as neither petitioner nor his defence assistant were present. Next date notified was 19.11.2007. When the committee assembled petitioner sought hearing to be deferred by a few hours stating that Mr.R.Nag was likely to be available at around lunch time. Defence assistant did not come. Matter was adjourned for

20.11.2007. Mr.Gulgule was present for being cross-examined. Defence assistant was not present. Matter was listed for 21.11.2007. Once again, defence assistant was not available. Matter was thereafter listed for 29.11.2007. It was postponed for the next date i.e. 30.11.2007. Defence assistant failed to appear. Petitioner was given an opportunity to cross-examine the witness. He declined.

10. It is apparent that the petitioner is dragging on with the matter. I note that the order dated 6.2.2007 records that the petitioner will extend full cooperation in the completion of the enquiry.

11. It was sought to be urged by learned counsel for the petitioner that the department is not willing to bear the traveling expenses of the defence assistant.

12. I am afraid, this substantive dispute cannot form the subject matter of consideration under contempt jurisdiction. If the rules require that the department has to bear the traveling expenses of the defence assistant, petitioner would be advised to take resort to an appropriate action. If the rules are silent or do not permit so, petitioner has to make available the necessary finances.

13. No case is made out to take any action under contempt jurisdiction against the respondent.

14. The petition is dismissed.

15. No costs.

December 17, 2007
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PRADEEP NANDRAJOG, J.